with. See *Angle* v. *North-Western Mutual Life Ins. Co.*, 92 U. S. 330, 341. If it is apparent that the notes were given in one transaction for one consideration, the notice given by the overdue notes is as effective for the others as for themselves. *Harrington* v. *Claflin & Co.*, 91 Tex. 294, 42 S. W. 1055; *Old National Bank of Fort Wayne* v. *Marcy*, 79 Ark. 149, 95 S. W. 145. But the fact that all the notes are secured by one mortgage is not in itself enough to make this apparent. *Boss* v. *Hewitt*, 15 Wis. 260; *Bank of Edgefield* v. *Farmers' Co-operative Mfg. Co.*, 52 Fed. 98. The conclusion of the court that the notes disclosed themselves to be parts of the same transaction is perhaps justified by the similar date of all the notes.

CARRIERS — LIENS — RIGHT OF CARRIER TO HOLD DAMAGED GOODS FOR NON-PAYMENT OF FREIGHT. — Goods were damaged in transit through the fault of the carrier to an amount greater than the freight charges. The carrier refused to deliver them unless the usual freight charges were paid. The consignee, who was also consignor, then sued the carrier *ex contractu* for the value of the goods. *Held*, that he cannot recover. *Wilensky* v. *Central of Georgia Ry. Co.*, 72 S. E. 418 (Ga., Sup. Ct.).

Because of a liberal procedure, the weight of American authority allows the consignee to defend a suit for freight by showing that the damage to the goods through the fault of the carrier equals or exceeds the charges. *Leech* v. *Baldwin*, 5 Watts (Pa.) 446. *Contra*, *Shields* v. *Davis*, 6 Taunt. 65. Moreover, the consignee may bring replevin or trover when the carrier refuses, on the ground of non-payment of freight, to deliver goods so damaged. *Moran Brothers Co.* v. *Northern Pacific R. Co.*, 19 Wash. 266, 53 Pac. 49, 1101; *Missouri Pacific Ry. Co.* v. *Peru-Van Zandt Implement Co.*, 73 Kan. 295, 85 Pac. 408, 87 Pac. 80. See 20 HARV. L. REV. 146. When the amount of damage does not equal the freight charges, the carrier has a lien for the balance only. *Bancroft* v. *Peters*, 4 Mich. 619. The reasoning is that if the carrier is liable for damage equal to the freight, there is no debt; and where there is no debt there is no lien. *Ewart* v. *Kerr*, 1 Rice (S. C.) 203. But the principal case is an action *ex contractu*. The carrier has undertaken, to the plaintiff as consignor, to transport and deliver the goods, on payment of proper charges, to the consignee. Unless he permits the consignee to take them without advancing illegal claims, the undertaking is not fulfilled. It is submitted that for this breach the carrier should be liable in contract for the damage actually incurred.

CARRIERS — LOSS OR INJURY TO GOODS — RESPONSIBILITY OF CARRIER FOR ANIMALS IN PENS UNDER STATUTORY REQUIREMENT. — A federal statute provided that on an interstate shipment no railroad should confine animals in cars longer than twenty-eight consecutive hours, without removing them for five hours into properly equipped pens for rest, water, and feeding, unless prevented by storm or other unavoidable causes. The plaintiff's sheep, while in the defendant carrier's stockyards, in transit, were killed. *Held*, that the defendant is not liable in the absence of negligence. *Beckman* v. *Southern Pacific Co.*, 118 Pac. 118 (Utah).

The law is settled that the transportation of animals is common carriage. *Swiney* v. *American Express Co.*, 115 N. W. 212 (Ia.). The carrier is bound to feed and care for the animals in transit. *Toledo, Wabash & Western Ry. Co.* v. *Hamilton*, 76 Ill. 393. While they are being carried, and until the undertaking is completed, he is an insurer, although the animals are in stockyards or pens. *Texas & Pacific Ry. Co.* v. *Turner*, 37 S. W. 643 (Tex.). See *Nelson* v. *Chicago, etc. Ry. Co.*, 78 Neb. 57, 59, 110 N. W. 741, 742. The ground of the decision in the principal case can be supported only on the reasoning that the statute relieves the carrier of his common-law liability while the cattle are in the pens. But the statute merely requires unloading at stated intervals, unless

the unloading is prevented by unavoidable causes. A statute changing the common law modifies it no further than the clear import of its language necessarily implies. *Johnson* v. *Southern Pacific Co.*, 117 Fed. 462. The decisions under this statute give no indication of relieving the carrier of his common-law liability, and uniformly consider its only purpose to be the prevention of cruel treatment of animals in interstate shipments. See *Chesapeake & Ohio Ry. Co.* v. *American Exchange Bank*, 92 Va. 495, 502, 23 S. E. 935, 937. *United States* v. *St. Louis, I. M. & S. Ry. Co.*, 177 Fed. 205. The liability of the carrier in transportation is still left as at common law. See *Missouri Pacific Ry. Co.* v. *Ivy*, 79 Tex. 444, 446, 15 S. W. 692, 693. The court seems to go beyond legitimate bounds in an attempt to cut down the carrier's common-law liability.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — CONTAGIOUS DISEASE OF FELLOW PASSENGER. — The plaintiff sued as administrator for the death of his intestate, alleged to have been caused by contagious disease contracted from a fellow passenger of the intestate on the defendant's railroad. The defendant's conductor had no knowledge of the disease of the fellow passenger. *Held*, that the plaintiff cannot recover. *Bogard's Admr.* v. *Illinois Central R. Co.*, 139 S. W. 855 (Ky.).

A carrier is under a duty to use the highest care to provide safe conveyances, and is liable for injuries to passengers resulting from defects which might have been discovered by the use of such care. *Palmer* v. *President, etc. of Delaware & Hudson Canal Co.*, 120 N. Y. 170, 24 N. E. 302; *International & Great Northern Ry. Co.* v. *Anthony*, 24 Tex. Civ. App. 9, 57 S. W. 897. A carrier is under a duty to use the highest care to protect passengers from foreseeable injuries by their fellow passengers. *Kuhlen* v. *Boston & Northern Street Ry. Co.*, 193 Mass. 341, 79 N. E. 815. It would not be practicable to extend the duty of inspection of conveyances to inspection of passengers. *Cf. Gulf, Colorado & Santa Fé Ry. Co.* v. *Shields*, 9 Tex. Civ. App. 652, 29 S. W. 652. But the duty of the carrier would seem to require the conductor to take precautions when a reasonably prudent man would be so impelled by the facts under his observation. *Cf. Houston & T. C. R. Co.* v. *Phillio*, 67 S. W. 915 (Tex.). Under this view the decision in the principal case may be questioned. But *cf. Long* v. *Chicago, Kansas & Western R. Co.*, 48 Kan. 28, 28 Pac. 977.

CONSPIRACY — CRIMINAL LIABILITY — EFFECT OF GRANTING NEW TRIAL TO ONE DEFENDANT. — A new trial was granted one of several defendants indicted for conspiracy, on errors in no way prejudicial to the others, one of whom appealed. *Held*, that the verdict should stand as to the appellant. *Dufour* v. *United States*, 39 Wash. L. R. 714 (D. C., Ct. App.).

This case follows a recent American decision. *Browne* v. *United States*, 145 Fed. 1. But it is opposed to the weight of authority. *Queen* v. *Gompertz*, 9 Q. B. N. S. 824; *Isaacs* v. *State*, 48 Miss. 234. There seems to be no reason on principle why a new trial should not be given to one conspirator and refused to another, if it is certain that the error affected only the first. As a practical matter it usually will affect both, but by no means necessarily. There is, of course, no repugnancy in acquitting some and convicting others of those jointly indicted for conspiracy. *Jones* v. *Commonwealth*, 31 Grat. (Va.) 836.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — INHERITANCE TAX ON DEPOSITED PROPERTY COLLECTED THROUGH SAFE DEPOSIT COMPANY. — A statute provided that a safe deposit company on the death of a depositor should give the proper state officials ten days' notice before delivering over the property deposited to the legal representatives of the deceased and should retain a sufficient amount thereof to pay an inheritance tax on such property or be